



# Apache County Attorney's Office

Michael B. Whiting, County Attorney

"...one nation, under God, indivisible, with liberty and justice for all."

P.O. Box 637 ■ St. Johns, AZ 85936 ■ 928.337.7560 ■  
928.337.2427 (fax)

August 8, 2013

Carlyle Begay  
P.O. Box 1222  
Window Rock, AZ 86515

541 South Honeysuckle Lane  
Gilbert, AZ 85296

Re: Demand *Quo Warranto* in Relation to Qualifications for District 7 Senate Representation

Dear Mr. Begay:

This Office received a demand and related information requesting this Office to proceed *Quo Warranto* against you for allegedly usurping the Office of Senate for Legislative District 7. The allegations consist of an application by you for membership in the Gilbert Industrial Development Authority in which you state in March of this year that you are, and have been for over seven years, a resident of the Town of Gilbert, Maricopa County, Arizona. In the application you also include your physical address in the Town of Gilbert. In addition, in this application you state you are a registered voter within the Town of Gilbert and eligible to vote in the Town of Gilbert's elections. Further, this office was provided information that you only recently, on July 22, 2013, (within the last few weeks) registered to vote in Apache County and later rescinded your registration in Maricopa County, July 25, 2013. Also, your last 10 listed addresses are not located in Apache County. Further, on your LinkedIn profile you indicate you live the in the Phoenix area.

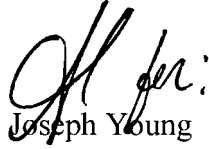
Attached to this letter you will find the documents this office has received: 1) your recent change in voter registration and, 2) the application you submitted related to the Town of Gilbert's Industrial Development Authority, 3) you LinkedIn profile where you indicate you live in the Phoenix Area, 4) a search of your last 10 addresses showing have not listed any address in Apache County along, 5) an affidavit by Mr. Albert Hale alleging that you are not qualified to take office for Legislative District 7 and, 6) a printout from the Town of Gilbert listing you as being on the Industrial Development Authority.

As you may know, accordingly to the Arizona Constitution, no legislator may take office unless such person has lived in the County for at least one year proceeding election or appointment. Please see 7) the opinion from the Arizona Attorney General attached to this letter, which explains such requirement and lists the relevant constitutional and statutory sections governing the appointment; such as, being a resident in the appointing county for at least one (1) year. Therefore, if the allegations made by Mr. Hale are true, your appointment to the Office of Senate for Legislative District 7 is unlawful, and you may be usurping such position.

Pursuant to A.R.S. 12-2041 and related case law, this office is mandated to proceed in *Quo Warranto* against you to remove you from your position where unchallenged evidence is presented relating to your qualifications. **Thus, we respectfully request you provide us contradictory evidence showing your proper residency in Apache County.** I would suggest you obtain independent legal counsel as soon as possible, and would request that communications between your counsel and this Office be initiated to ensure receipt of contradictory evidence

I hope this letter was clear in explaining this Office's duties when receiving a demand *Quo Warranto* and hope to receive evidence or other information from you soon. If you have any further questions, please do not hesitate to contact me or our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Young', is written over the printed name.

Joseph Young  
Deputy County Attorney

Cc: Tom White Jr.  
Joe Shirley  
Barry Weller  
Delwin Wengert  
Tom Ryan  
Tom Horne

**1**

[1] Permanent Early Voting List - Early Ballot (see instructions above) <input type="checkbox"/> YES, I want to automatically receive an early ballot for each election for which I am eligible. <input checked="" type="checkbox"/> NO, I DO NOT want to automatically receive an early ballot. I understand CHECKING THIS BOX will remove my name from the list if it was previously included.		BOX FOR OFFICE USE ONLY	
[2] Last Name BEGAY		First Name CARLYLE	Middle Name WILMER Jr./Sr./III
[3] Address <u>where you live</u> - If no street address, describe residence location using mileage, cross streets, parcel #, subdivision name and lot, or landmarks. Do not use post office box or business address. Draw a map below if located in rural area. 3 MILES NW HWY 264 FROM CANADO			[4] Apt./Unit/Space
[5] City CANADO	[6] Zip 86505 - 1757	[7] Address <u>where you get your mail</u> , if mail is not delivered to your home PO BOX 1222, WINDOW ROCK, AZ 86515	
[8] Last four digits of Social Security Number 7866	[9] AZ Driver License Number or AZ Nonoperating License Number D06960100	[10] Optional Tribal Identification Number	[11] Alien Registration Number
[12] Birth Date (MM/DD/YYYY) 12/14/1980	[13] State or Country of Birth AZ	[14] Party Preference <input type="checkbox"/> Republican <input checked="" type="checkbox"/> Democratic <input type="checkbox"/> Other	[15] Telephone number 602-206-7992 [16] Occupation PROF. MANAGEMENT
[17] If you were registered to vote in another state, list former address including county and state. MARICOPA		[18] List former name (if applicable)	[19] Father's name or mother's maiden name BEGAY
[20] Are you willing to work at a polling place on election day? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		[21] E-mail address CBEGAY@AIHMP.COM	
[22] • Are you a citizen of the United States of America? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • Will you be 18 years of age on or before election day? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If you checked 'No' to either one of these questions, do not submit this form. VOTER DECLARATION - By signing below, I swear or affirm that the above information is true, that I am a RESIDENT of Arizona, I am NOT a convicted FELON or my civil rights are restored, and I have NOT been adjudicated INCOMPETENT.		[23] If no street address draw a map here: 	
X <u>Carlyle Begay</u> SIGN HERE		This is a printed representation of the completed ServiceArizona web form 201307221417070001 07/22/2013 DATE	
[24] If you are unable to sign the form, the form can be completed at your direction. The person who assisted you must sign here. SIGNATURE OF PERSON ASSISTING		DATE	

File Street File Statewide Search Agency Matching Duplicate Processing

Street File Statewide Search Agency Matching Duplicate Processing

New Search Refine Current Search Back

Registrant ID: M003114780

Prev Registrant ID:

Jurisdiction: MARICOPA

Effective Date of Change: 4/10/2008

Name

Title:

Last: BEGAY

First: CARLYLE

Middle: WILMER

Suffix:

## Confirmed Residential Address

Street #: 541

Sfx:

Dir Prefix: SOUTH

Street: HONEYSUCKLE

Type: LANE

Dir Suffix:

Non-Standard:

Unit Type:

Unit No:

City: GILBERT

State: AZ

Zipcode: 85296

CR:

## Confirmed Mailing Address

Line 1:

Line 2:

Line 3:

Line 4:

City:

State:

Zipcode:

CR:

Military: No Foreign: No

## Registrant Data

SSN: 7866

Party: DEMOCRATIC

DL or ID#: D06960100

Date of Birth: 12/14/1980

## Federal Data

Reg Date: 4/10/2008

Status: CANCELED

Reason:

Attachments: Voter History Precinct

Description	Date Modified	File Type
VOTER REGISTRATION APPLICATION	4/11/2008	TIF

(1) Are you registered to vote at another address? Yes ☐ No ☒ If Yes, list the former address, including county and state.

MARICOPA

(2) Last Name: BEGAY

(3) Address where you live - If no street address, describe residence by box or business address. Draw a map below if located in rural area.

541 S HONEYSUCKLE LN

(4) City: GILBERT (5) County: MARICOPA (6) Zip: 85296 - 21

(7) Birth Date (Month/Day/Year): 12/14/1980 (8) State or Country of Birth: ARIZONA

(9) AZ Driver license number or AZ Nonoperator license number: 527977086 (10) AZ Driver license number or AZ Nonoperator license number - valid date: 05/22/2010

(11) Specify Party Preference: DEMOCRATIC (12) Occupation: PROF:MANAGEMENT

(13) Are you a citizen of the United States of America? Yes ☒ No ☐ Will you be 18 years of age on or before election?

VOTER DECLARATION - By signing below, I swear or affirm that I AM NOT a convicted FELON or my civil rights are restored.

SIGN HERE: *Carlyle Begay*

(14) If you are unable to sign this form, the form can be completed by your SIGNATURE OF PERSON ASSISTING.

(15) Will you be voting in person on election day? Yes ☐ No ☐

dy

start

**2**



## Application Industrial Development Authority

### New Applicant

Date Submitted: 02/04/2013

Regular attendance is required for board, commission, and committee members. The Code of Gilbert, Section 1-205(b) states: Except for members of the slum clearance and redevelopment commission, if any member, including designated seats or ad hoc members is absent for three consecutive meetings or absent from 50 percent or more meetings during any six-month period, or fails to attend required training, his office shall be automatically vacated. Attendance at meetings must be reported to the town clerk within 24 hours of the meeting. The town clerk shall notify the member in writing by certified, return receipt mail that the office has been automatically vacated. The member may submit an application for reinstatement to the clerk within ten days of the date of receipt of the notice or ten days after the post mark of the letter, whichever is earlier. The application for reinstatement shall set forth the member's grounds for reinstatement. The council shall either reinstate the member to the office or shall appoint a new member to fill the vacancy. Members removed for attendance or failure to attend required training shall not be reappointed without an interview before the council.

Last Name	First Name	Middle Name	Salutation
Begay	Carlyle	Wilmer	Mr.
Address 1	Address 2	City	Zip Code

Gilbert

Home Phone Number	E-mail Address
(602) 206-7992	cbegay@aihmp.com

Do you live within the Corporate Limits of Gilbert? **Yes**

How long have you lived in Gilbert: **7 Years**

Are you registered to vote in Town Elections? **Yes**

#### Formal Education:

BS, Molecular and Cellular Biology, University of Arizona MHS, Masters in Health Sector Management, W.P. Carey School of Business, Arizona State University

#### Past or Current Organizational Memberships and Offices Held:

1) 2nd Vice-Chair, Arizona Democratic Party, Native American Caucus 2) Board Chair, Community Advisory Board Member, Partnership for the Center for American Indian Resiliency (CAIR) at NAU and Univ. of Arizona 3) Board of Director, Greater Arizona Development Authority 4) Board of Director, American Indian Chamber of Commerce of Arizona

#### Employer Information:

Present Employer	Business Address	Phone Number	Position
AIHMP, Inc.	P.O. Box 42535 Phoenix, Arizona 85080	(602) 206-7992	VP, Business Development

## Supplemental Questionnaire

### **1. What experience, abilities or knowledge do you possess which might qualify you, or give you special insight, or be helpful to the mission of this board?**

As mentioned above, I have direct experience and knowledge of how investments in infrastructure and access to low cost debt have proven that these investments grow local economies and provide local citizens with a better quality of life. Since 2012 I have been a Board of Director for the Greater Arizona Development Authority and was directly responsible for setting policy and approving all projects seeking technical or financial assistance. Like Gilbert's Industrial Development Authority Board, GADA is authorized under state statute to offer both financial and technical assistance programs. This has allowed borrowers with lower investment grade ratings to realize, in some cases, substantial interest savings. GADA has the ability to subsidize the costs of bond issuance to provide further savings on fees for underwriters, financial advisors, bond counsel, trustees, bond rating and bond insurance premiums. Depending on the loan amount, past GADA financial assistance packages have resulted in a savings to borrowers of \$25,000 to \$200,000.

### **2. What, in your opinion, is the purpose or mission of this board?**

To assist the City of Gilbert with the promotion of industry and trade through the development of infrastructure projects that enhance community and economic development. This is accomplished by lowering the costs of financing and help accelerate project development to maintain and enhance Gilbert citizens with a quality of life.

### **3. What new emphasis or improvement would you like to see incorporated in the future direction of the Industrial Development Authority?**

Aside from the Industrial Development Authorities (IDA) ability to issue Bonds (loans) for financial assistance through interest savings, potential recommended emphasis for the IDA could include 1) Technical assistance competitive grants for early state project development and used for engineering planning, design review, feasibility studies or other infrastructure development elements. These technical assistance grants may be repaid from the proceeds of a bond issuance. When the program is active, it is useful in helping to develop early phases of projects.

### **4. What are the unique skills and talents you feel you can contribute?**

In my short professional career I have had a tremendous acumen and passion for health policy and business. I have focused the majority of my career efforts on services related to Indian health and Tribal Economic Development. I have direct experience in the management of health care organizations, managed care, health care market structure, and health care delivery. In addition I have assisted Tribal Nations in Arizona and across the U.S. find strategic solutions to protect and diversify their economies. In this manner I have a keen understanding of how public policy actions and economic development solutions affect tribal communities. Growing up I was always encouraged to apply myself as best as I could, to get a good education, and make a difference in Indian Country. I spent the early part of my life on the Navajo Nation with my grandparents and I always remembered my grandfather telling me that my generation and future generations are the future of our people. I took this instruction and lesson in life, made the most of every opportunity and even today continue to work in areas of American Indian healthcare, business, and economic development. While completing my bachelors, I was a student researcher for the Native American Cancer Partnership (NACRP) at the University of Arizona investigating and examining the carcinogenic effects of uranium on the Navajo Reservation. Throughout my academic career, I served in diverse capacities such as an elementary and high school student teacher, a student researcher at the Harvard School of Public Health, a recruiter for job placement of women and minorities in the sports, health and fitness industries and as a Morris K. Udall Foundation Scholarship and Excellence Scholar. I also served in the nation's capital as a health policy congressional fellow in Washington D.C. for the Barbara Jordan Health Policy Scholars Program of the Kaiser Family Foundation. In that capacity I worked closely with Federal and state policymakers, agencies, by tracking and researching legislative and regulatory developments. I worked for AmeriChoice, a business unit of UnitedHealth Group, which served more than 1.3 million beneficiaries of government health care programs. In this position with AmeriChoice, I developed and



**Registrations, Certifications and Licenses Currently Held:**

N/A

**Other additional qualifications or experiences which you have that would be applicable.**

Since 2009 I have been a Board of Director for the American Indian Chamber of Commerce of Arizona (AICCAZ). I was elected as Board President from 2010 through 2011. AICCAZ was founded in 1995 and incorporated as a non-profit organization in 1996. The focus of the Chamber is to provide a format for American Indian entrepreneurs to promote their business, for corporations to connect with American Indian businesses, to act as a liaison on tribal economic development issues and to offer the best in resources, training and networking for the American Indian business. AICCAZ offers our members the opportunity to exchange ideas and information with business owners throughout the state. During my leadership as Board President, AICCAZ experienced incredible success and growth. In 2009 we completed a strategic plan to begin developing a roadmap that has served as a guide for our organizational growth and stability, and has helped assure that AICCAZ remains relevant and responsive to the needs of our business community. From a governance perspective, it also enabled the Board of Directors to set policies and goals to guide the organization, and provided a basis for monitoring progress, assessing results and impact, and facilitating new program development. As a result of this strategic planning process we created a practical vision of what we wanted to see in place 5 years from now as a result of our efforts. This practical vision included the following seven key areas: 1) Leading Resources for American Indian Business 2) Strong Collaborations with Strategic Partners 3) Increased Diversified Funding Resources 4) Proactive Board 5) Professional Organizational Structure 6) Promote Strong Business/Community Development 7) Aggressive Statewide Representation. As of today we have made great strides in all seven areas of our practical vision. We have acted on opportunities to keep the Chamber Members informed of new business opportunities and of government decisions effecting businesses. We are currently working to establish business and workforce assistance programs, mentor protégé programs, and a scholarship program for future American Indian business leaders. We are continuing to form collaborations with other state based Chambers, Associations and Tribal Governments, Enterprises and Tribal Programs. We have hired our first ever full-time Executive Director, Loren Tapahe, and we view this as a momentous occasion not only for the Chamber, but for those American Indian businesses in Arizona who look to the Chamber for support, especially during these tough economic times. The AICCAZ has had many great successes over the years, but I believe the best is yet to come for our organization.

**Why are you interested in serving?**

I am interested in serving on the City of Gilbert's Industrial Development Authority Board because I understand first hand the unique reality of the lack of local public infrastructure throughout Arizona and its subsequent impact on economic development, self-determination and self-sufficiency. Throughout my career I have had the opportunity to work with various Arizona cities, towns and tribal governments and its leaders in a variety of settings, but primarily in healthcare and economic development. In this experience I have come to understand that local city and community governments have a growing need for infrastructure improvement and need for resources to assist to develop and finance public infrastructure. I also believe I am best qualified for this position because I have direct experience and knowledge of how investments in infrastructure and access to low cost debt have proven that these investments grow local economies and provide local citizens with a better quality of life - the goal of every government. In 2012 I was appointed by Governor Jan Brewer to sit on the Greater Arizona Development Authority. GADA is governed by a nine-member Board of Directors comprised of four ex-officio members and five members who are appointed by the Governor. The board is responsible for setting policy and approving all projects seeking technical or financial assistance. In this capacity I have direct experience with assisting local and tribal governments and special districts with the development of public infrastructure. Like Gilbert's Industrial Development Authority Board, GADA is authorized under statute to offer both financial and technical assistance programs. Additionally, since 2009 I have worked on a national working group with the National Congress of American Indians (NCAI) to assess how the American Recovery and Reinvestment Act impacted infrastructure needs across the U.S. within Tribal communities. The Recovery Act included appropriations for Tribal Economic Development Bonds. Even though Tribes have never had full access to tax-exempt markets, access to low cost debt proved to help 58 tribes in 2009 and 76 tribes in 2010 to build reservation

Implemented AmeriChoice's national Medicare and Medicaid products. Throughout my young professional career, I have gained a thorough knowledge of the management, implementation and evaluation of health policy in a variety of settings, which includes federal, state, and tribal agencies, health consulting firms, and managed care. I have a grasp of how a variety of management approaches can be applied to a wide spectrum of healthcare and economic development issues.

roads, schools, and health care facilities. Access to the low-cost debt market also provided economic development revenue for tribes, since tribal governments rely on that revenue in lieu of a tax base. Tribes' ability to finance revenue-generating projects enabled them to fund and deliver much-needed government services to their citizens.

**What time commitment are you willing to make?**

Although I currently sit on multiple organizational boards my current job is flexible to accommodate any required meetings and time commitments.

**Other comments:**



3



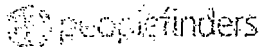
4

**View  
PDF**

- 1) Click the download button
- 2) This will take you to our web page
- 3) Download the FREE product

from  to 

**Download**



My Search | My Account | My Subscriptions | Log Out

Welcome, Paula Hale. Enter or Paste Address with a Zip Code

People Search   Reverse Phone   Background Check   Criminal Records   Public Records   Social Profiles   Genealogy Search

### Carlyle W Begay (1 Result)

Get details for all of these results

Person	Known Addresses	Phone Numbers	Email	Possible Relations
1. <b>CARLYLE BEGAY</b> (AGE 32) BIRTH DATE: 12/14/1980	<b>ADDRESS 1:</b> 541 S HONEYSUCKLE LN GILBERT, AZ 85296	(928) 528-3715	<a href="#">View Details</a>	AUGUST BEGAY (AGE 32) ANITA BEGAY (AGE 32) CAROL BEGAY (AGE 32) CAROL V BEGAY (AGE 32) MARTHA C BEGAY MARTHA CILL BEGAY (AGE 32) MARTY C BEGAY MARTY P BEGAY VICTORIA BEGAY (AGE 32) WALTER N BEGAY (AGE 32) WALTER BEGAY WALTER N BEGAY (AGE 32) WALTER BEGAY (AGE 32) WALTER BEGAY (AGE 32) WALTER BEGAY (AGE 32)
<b>ASSOCIATED NAMES:</b> CARLYLE BEGAY BEGAY CARLYLE BEGAY CL	<b>ADDRESS 2:</b> 411 E INDIAN SCHOOL RD UNIT 3101 PHOENIX, AZ 85012			
<a href="#">Background Report</a>	<b>ADDRESS 3:</b> 101 S PLAYERS CLUB DR TUCSON, AZ 85745			
	<b>ADDRESS 4:</b> 3601 LAKE MARY RD UNIT 242 FLAGSTAFF, AZ 86001			
	<b>ADDRESS 5:</b> 5444 E BOULDER RUN DR FLAGSTAFF, AZ 86004			
	<b>ADDRESS 6:</b> 5085 STARFIELD RD FLAGSTAFF, AZ 86004			
	<b>ADDRESS 7:</b> 101 S PLAYERS CLUB DR UNIT 21201 TUCSON, AZ 85745			
	<b>ADDRESS 8:</b> 411 E INDIAN SCHOOL RD PHOENIX, AZ 85012			
	<b>ADDRESS 9:</b> 101 S PLAYERS CLUB DR UNIT 2420 TUCSON, AZ 85745			
	<b>ADDRESS 10:</b> 101 S PLAYERS CLUB DR UNIT 21204 TUCSON, AZ 85745			

Find all people who live near Carlyle W Begay

Name	City, State	Partial Email	Full Email Address	Phone	
BEGAY CARLYLE	FLAGSTAFF, AZ	carlyle.begay@...			<a href="#">View Details</a>
BEGAY CARLYLE	FLAGSTAFF, AZ	carlyle.begay@...			<a href="#">View Details</a>
BEGAY CARLYLE	FLAGSTAFF, AZ	carlyle.begay@...			<a href="#">View Details</a>
BEGAY CARLYLE	CHANDLER, AZ	carlyle.begay@...			<a href="#">View Details</a>

See all people who live near Carlyle W Begay

5



**LAW OFFICE OF THOMAS M. RYAN**

555 WEST CHANDLER BLVD., SUITE 204

CHANDLER, AZ 85225

**MAILING ADDRESS:**

P.O. BOX 6430

CHANDLER, AZ 85246-6430

WEBSITE: [www.thomasmryanlaw.com](http://www.thomasmryanlaw.com)

THOMAS M. RYAN

Certified Specialist Injury & Wrongful Death  
Arizona Board of Legal Specialization

PHONE: 480-963-3333

FAX: 480-726-1645

August 7, 2013

VIA EMAIL & U.S. MAIL

Michael B. Whiting, Esq.  
**Apache County Attorney**  
70 West 3<sup>rd</sup> South  
St. Johns, AZ 85936-0637

RECEIVED  
AUG 08 2013  
Apache County Attorney's Office

**Demand *Quo Warranto* Pursuant to A.R.S. §12-2042**

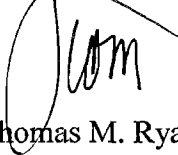
RE:   Office:       Arizona Senate LD7  
      Usurper:      Carlyle Begay (D-Gilbert)  
      Claimant:     Hon. Albert Hale (D-St. Michaels)

Dear Mr. Whiting:

This letter is to make a demand upon your office to proceed in *Quo Warranto* against Carlyle Begay (D-Gilbert) who has usurped the office of Senate LD7. Mr. Begay is not a resident of Apache County and was not one within the meaning of the Arizona constitution and election laws. In support of this demand *quo warranto* I have enclosed an Affidavit of Hon. Albert Hale, verified under oath pursuant to A.R.S. §12-2041, *et seq.* If you have any questions please do not hesitate to contact me.

Very truly yours,

**LAW OFFICE OF THOMAS M. RYAN**



Thomas M. Ryan

TMR/cmr

Enclosures

cc: Hon. Albert Hale

**AFFIDAVIT OF HON. ALBERT HALE  
VERIFICATION UNDER OATH  
A.R.S. §12-2041, ET SEQ.**

COUNTY OF MARICOPA            )  
  ) SS  
STATE OF ARIZONA             )

I, Hon. Albert Hale, being first duly sworn upon my oath depose and state as follows:

1. I am a resident of Apache County, and currently serve as State Representative for LD 7 in the Arizona Legislature. I was one of three names submitted to the Apache County Board of Supervisors by the Citizens Committee to fill the Senate seat for LD7 vacated by the recent resignation of Sen. Jack Jackson
2. One of the other names submitted to the Apache County Board of Supervisors was a non-resident of Apache County, Carlyle Begay.
3. Upon information and belief, Mr. Begay is not a resident of Apache County and has not been a resident of Apache County for the legally required minimum of one year before his appointment. Mr. Begay lists his address as 541 South Honeysuckle Lane, Gilbert, Arizona.
4. Mr. Begay applied in February 2013 to serve on the Town of Gilbert Industrial Development Authority (hereafter Gilbert IDA). In his application he verified he was a resident of Gilbert, Arizona and had been for the seven (7) preceding years. A copy of his application is attached to this Affidavit as **Exhibit 1**.
5. In order to be appointed and to serve on the Gilbert IDA an applicant must verify that he or she is a current resident of the Town of Gilbert. Mr. Begay was appointed to the Gilbert IDA in March, 2013. His term expires in 2019. The Town of Gilbert is not part of Apache County. It is part of Maricopa County, Arizona.
6. Mr. Begay is currently listed as a Board Member for the IDA of Gilbert, Arizona. There are no *ad hoc* members for this Board. All members must be residents and "qualified electors" of the City of Gilbert. Please see current board members at <http://www.gilbertaz.gov/townhall/boards>.
7. To be appointed to fill a vacated state senate seat all qualified candidates must reside within the said county no less than one year prior to the appointment. See Arizona Attorney General Opinion No. I13-003 (R13-005) issued July 12, 2013.

8. Mr. Begay changed his voter registration from Gilbert, Arizona to Apache County on July 22, 2013. Upon information and belief, he used a Post Office Box as evidence of his residence in Apache County. Upon information and belief, his actual physical residence is in Navajo County, not Apache County.
9. On July 28, 2013, I faxed a copy of the AG Opinion to the County Manager and pointed out that actual residency is critical. Supervisor Shirley informed me that they were not given a copy of the Opinion; all they got were letters of interest and resumes.
10. Neither the Citizens Selection Committee nor the Board of Supervisors asked questions concerning "actual physical presence" in the County nor did they ask for production of documentation to support "actual physical presence" in the County. These questions and documentation would have answered the basic requirement of "actual physical presence". But in this case, no questions were directed at residency nor was production of documentation supporting residence required.
11. This appointment is a violation of Ariz. Const. Art. 4, Pt., §2 "Qualification for Members of Legislature which sets forth the following requirements:  
**No person shall be a member of the Legislature unless he shall be a citizen of the United States at the time of his election, nor unless he shall be at least twenty-five years of age, and shall have been a resident of Arizona at least three years and of the county from which he is elected at least one year before his election.** (Emphasis added.)
12. This appointment is a violation of the Arizona Const. Art. 7, § 15 which states:  
**Every person elected or appointed to any elective office of trust or profit under the authority of the state, or any political division or any municipality thereof, shall be a qualified elector of the political division or municipality in which such person shall be elected.** (Emphasis added.)
13. Lastly, this appointment violates A.R.S. § 16-101(B) which states: For purposes of this title, "resident means an individual who has actual physical presence ... in the political subdivision, combined with an intent to remain. A temporary absence does not result in a loss of residence if the individual has an intent to return following his absence. An individual has only one residence for purposes of this title. (Emphasis added.)
14. The appointment of Mr. Begay to represent a Legislative District he is not legally qualified to represent means that the all of LD 7 will be without a If in fact Mr. Begay does not meet the residence requirement yet the Board's decision is



**Application  
Industrial Development Authority  
New Applicant  
Date Submitted: 02/04/2013**

*Regular attendance is required for board, commission, and committee members. The Code of Gilbert, Section 1-205 (b) states: Except for members of the slum clearance and redevelopment commission, if any member, including designated seats or ad hoc members is absent for three consecutive meetings or absent from 50 percent or more meetings during any six-month period, or fails to attend required training, his office shall be automatically vacated. Attendance at meetings must be reported to the town clerk within 24 hours of the meeting. The town clerk shall notify the member in writing by certified, return receipt mail that the office has been automatically vacated. The member may submit an application for reinstatement to the clerk within ten days of the date of receipt of the notice or ten days after the post mark of the letter, whichever is earlier. The application for reinstatement shall set forth the member's grounds for reinstatement. The council shall either reinstate the member to the office or shall appoint a new member to fill the vacancy. Members removed for attendance or failure to attend required training shall not be reappointed without an interview before the council.*

Last Name	First Name	Middle Name	Salutation
Begay	Carlyle	Wilmer	Mr.
Address 1	Address 2	City	Zip Code
		Gilbert	
Home Phone Number	E-mail Address		
(602) 206-7992	cbegay@alhmp.com		

Do you live within the Corporate Limits of Gilbert? **Yes**

How long have you lived in Gilbert: **7 Years**

Are you registered to vote in Town Elections? **Yes**

**Formal Education:**

BS, Molecular and Cellular Biology, University of Arizona MHSM, Masters in Health Sector Management, W.P. Carey School of Business, Arizona State University

**Past or Current Organizational Memberships and Offices Held:**

1) 2nd Vice-Chair, Arizona Democratic Party, Native American Caucus 2) Board Chair, Community Advisory Board Member, Partnership for the Center for American Indian Resiliency (CAIR) at NAU and Univ. of Arizona 3) Board of Director, Greater Arizona Development Authority 4) Board of Director, American Indian Chamber of Commerce of Arizona

**Employer Information:**

Present Employer	Business Address	Phone Number	Position
AIHMP, Inc.	P.O. Box 42535 Phoenix, Arizona 85080	(602) 206-7992	VP, Business Development

6

Thursday, August 8, 2013

[Explore Gilbert](#) | [Residents](#) | [Business](#) | [Services](#) | [How do I...](#) | [Town Hall](#) | [Employment](#) | [Contact Us](#)


[Home](#) :: [Town Hall](#) :: [Back to Previous](#)

## Council, Boards and Commissions

### Sign Up and Get Notified

Council and Planning Agenda E-mail Notification - [Sign up here to receive automatic e-mail notifications each time a Town Council or Planning Commission agenda is posted or updated.](#)

### Open Meeting Law

Meetings of the Council and Boards and Commissions are required to comply with the Arizona Revised Statutes, Title 38, Article 3.1, commonly referred to as the Open Meeting Law. Meetings are public, except for executive sessions.

Open Meeting Law materials may be accessed in the Attorney General's Arizona Agency Handbook, Chapter 7 and the Arizona Ombudsman's Open Meeting Book.

### Town Council

- Minutes
- Agendas
- Board, Commission and Committee Openings

#### Council Members

#### Council Meeting Schedule

### Ad Hoc Committee

- Minutes
- Agendas
- Board, Commission and Committee Openings

#### Ad Hoc Meeting Schedule

### Arts, Culture, and Tourism Committee

- Minutes
- Agendas
- Board, Commission and Committee Openings

#### ACT Committee Members

#### ACT Meeting Schedule

### Community Services Committee

- Minutes
- Agendas
- Board, Commission and Committee Openings
- Sign up to receive an e-mail when there is a board or commission opening

The Community Services Committee meets on annual bases to review applications for funding for contracts for human & housing service, public facilities & economic program agencies and arts & cultural grants.

### Quick Links

#### Council, Boards & Commissions Home

##### Meeting Agendas

[Town Council](#)  
[Ad Hoc](#)  
[Community Services](#)  
[Congress of Neighborhoods](#)  
[Design Review](#)  
[Educational Access](#)  
[Environmental & Energy](#)  
[Fire Board](#)  
[Firemen's Pension](#)  
[Human Relations](#)  
[Culture & Arts Promotion](#)  
[Industrial Development](#)  
[Parks, Recreation, and Library Services](#)  
[Planning](#)  
[Police Board](#)  
[Presiding Judge](#)  
[Redevelopment](#)  
[Special Events](#)  
[TOG Health Insurance](#)  
[TOG Public Facilities](#)  
[TOG Water Resources](#)  
[Utilities](#)

##### Highlights

[Town Hall Home](#)  
[Board Openings](#)  
[Cable Channel 11](#)  
[Draft & Final Minutes](#)  
[Legal Notices](#)  
[Agenda Email Notification](#)



## Firemen's Pension and Relief Fund Board

- Minutes
- Agendas
- Board, Commission and Committee Openings
- Sign up to receive an e-mail when there is a board or commission opening

### Firemen's Pension and Relief Fund Board Members

### Firemen's Pension and Relief Fund Board Schedule

## Gilbert Educational Cable Access Governing Board

- Minutes
- Agendas
- Board, Commission and Committee Openings
- Sign up to receive an e-mail when there is a board or commission opening

The Gilbert Education Cable Access Governing Board manages the educational access channel, reserved by the cable television operator licensed to the Town of Gilbert. Membership consists of representatives from local schools, colleges, universities, and the Town.

### Gilbert Education Cable Access Governing Board Members

### Gilbert Education Cable Access Governing Board Meeting Schedule

## Human Relations Commission

- Minutes – HRCAP Final Report to Council – Parks, Open Space, and Recreation Vision Statement
- Chief Tim Dorn's Statement Concerning the Bermea Messerschmidt Case
- Agendas
- Board, Commission and Committee Openings
- Sign up to receive an e-mail when there is a board or commission opening

Culture is a people's unique way of life art is the human expression to that experience human relations are the interaction between people and society. The Commission was established to advise Council on these values. Members must reside within Town limits.

### Human Relations Committee Members

### Human Relations Committee Meeting Schedule

## Industrial Development Authority

- Minutes
- Agendas
- Board, Commission and Committee Openings
- Sign up to receive an e-mail when there is a board or commission opening

The Industrial Development Authority is a public corporation, incorporated to recommend to Council projects the Town should endorse for tax-exempt, low interest bond financing made available by Federal law for certain eligible construction projects. State and Federal laws restrict the types and cost of projects the Authority may finance. Members must reside within the Town limits and be qualified electors.

### Industrial Development Authority Members

#### Board Members

Kevin Day, President  
Scott Watson, Vice President  
Christopher Smith, Secretary  
Thomas Jelinski, Treasurer

Carlyle Begay  
William Brice  
Keith Lamparter  
Hugo Larios  
Jason Lochinger

#### Bond Counsel

Greenberg Traurig, LLP

**7**





STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION

by

THOMAS C. HORNE  
ATTORNEY GENERAL

July 12, 2013

No. 113-003  
(R13-005)

Re: Vacancy in the Legislature

To: Honorable Kelly Townsend  
Arizona House of Representatives

Questions Presented

You have asked for an opinion on the following questions:

1. Does Arizona Revised Statutes (A.R.S.) § 41-1202(A)(2) and (3) require the nomination of a qualified elector from the same county of residence as that of the person vacating a legislative office in a legislative district that encompasses portions of more than one county within its boundaries?

2. Is an otherwise qualified elector eligible for nomination under A.R.S. § 41-1202(A) if he or she purports to meet the residency requirement by relying on a room above his or her commercial property?

### Summary Answers

1. Yes, A.R.S. § 41-1202(A) requires a vacancy to be filled by a qualified elector of the same political party residing in the same county as the person who is vacating the office.

2. As the answer to the first question implies, the answer to the second question depends on actual residency as a matter of fact and law. We cannot answer this question without additional factual information to indicate whether the person actually resides in the room above commercial property.

### Background

#### The Statutory Procedure

In 1999, the Legislature enacted a procedure for filling a legislative vacancy in A.R.S. § 41-1202.<sup>1</sup> The Legislature amended A.R.S. § 41-1202 in 2002 and again in 2012. Under the currently effective version, subsection 1202(A) applies if the officeholder who is leaving the office is a member of a political party organized pursuant to title 16, chapter 5, article 2, if that party has at least thirty elected committeemen who are from precincts that are "in the legislative district and that are in the county in which the vacancy occurred." A.R.S. § 41-1202(A). Subsection 1202(B) applies if there are fewer than thirty elected committeemen of the appropriate political party. A.R.S. § 41-1202(B).

Under subsection 1202(A), the secretary of state must notify the state party chairperson of the vacating legislator's political party, who must then provide written notice of a meeting to fill the vacancy to "all elected precinct committeemen of the appropriate political party from precincts that are in the legislative district and that are in the county in which the vacancy occurred." A.R.S. § 41-1202(A)(1). Those precinct committeemen must then nominate three

---

<sup>1</sup> A vacancy in the office of United States senator or representative is filled either by the next general election, if held within six months from the date of the vacancy, or by a special election, if the next general election is more than six months in the future. A.R.S. § 16-222.

qualified electors who meet the requirements for service in the legislature and "who belong to the same political party and reside at the time of nomination in the same district and county as the person elected or appointed to the office immediately before the vacancy occurred." A.R.S. § 41-1202(A)(2). The state party chairman must then forward the three nominees' names to the "board of supervisors of the county of residence of the person elected or appointed to the office immediately before the vacancy occurred," and the board of supervisors shall then appoint a successor from those three nominees. A.R.S. § 41-1202(A)(4).

#### The Maricopa County Attorney's Advice Letter

In 2012, a vacancy in the Legislature prompted a Maricopa County supervisor to request an opinion from the Maricopa County Attorney regarding whether Ariz. Const. art. 4, pt. 2, § 2 required the Board of Supervisors to fill the vacancy by appointing a qualified elector who had been a resident of Maricopa County for at least one year. Senator Scott Bundgaard, a Maricopa County resident representing Legislative District 4—which includes portions of both Maricopa and Yavapai Counties—resigned. The request focused on the one-year residency requirement, not on which county's precinct committee persons (and board of supervisors) would nominate and appoint someone to fill the seat. Nonetheless, the responding letter<sup>2</sup> addressed the latter issue.

Article 4, pt. 2, § 2 of the Arizona Constitution provides:

No person shall be a member of the Legislature unless he shall be a citizen of the United States at the time of his election, nor unless he shall be at least twenty-five years of age, and shall have been a resident of Arizona at least three years and of the county from which he is elected at least one year before his election.

---

<sup>2</sup> A deputy county attorney responded to the supervisor's request for a legal opinion. The letter was not signed by the Maricopa County Attorney himself.

For purposes of Title 16, a "resident" is an "individual who has actual physical presence in this state, or for purposes of a political subdivision actual physical presence in the political subdivision, combined with an intent to remain." A.R.S. § 16-101(B).

The letter from the Maricopa County Attorney's Office concluded that the one-year residency requirement set forth in the Arizona Constitution is unenforceable because legislators are no longer elected from counties. The letter recounted the history of apportionment of legislators in Arizona and noted that before 1965 the Legislature consisted of two senators from each county and eighty state representatives apportioned to each county based on the ballots cast in the preceding gubernatorial election. In 1964, the United States Supreme Court ruled that the Equal Protection Clause requires that legislative districts be "as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 578 (1964). Beginning with the 28th Legislature in 1967, the Senate had thirty members and the House of Representatives had sixty members, who are apportioned among thirty legislative districts based on the population rather than county lines. Ariz. Const. art. 4, pt. 2, § 1.

Article 4, pt. 2, § 2 has not been amended to keep pace with the changes in legislative apportionment set forth in the preceding section. The letter from the Maricopa County Attorney's Office indicated that the one-year residency requirement is unenforceable because it is a vestige of the previous apportionment process. Thus, the letter concluded that individuals considered for appointment to fill the vacancy in Legislative District 4 need not have resided in Maricopa County for at least one year prior to their nomination or appointment.

### Analysis

#### The Legislative History of A.R.S. § 41-1202 Reflects the Legislature's Intent to Impose the County of Residence Requirement

The original version of A.R.S. § 41-1202 vested responsibility for filling legislative vacancies solely in the county boards of supervisors. When House Bill 2586 was introduced in 1999 to enact a new section 41-1202, it did not mention the residency of the vacating legislator, but instead provided the following:

A. If a vacancy occurs in the legislature and the vacant seat was represented by a political party that has precinct committeemen organized pursuant to title 16, chapter 5, article 3, the secretary of state shall notify the state party chairman of the appropriate political party of the vacancy. Within three business days after notification of the vacancy by the secretary of state, the state party chairman of the appropriate political party or the chairman's designee shall give written notice of the meeting to fill the vacancy to all elected precinct committeemen of the appropriate political party *from precincts that comprise the legislative district in which the vacancy occurred*. The elected precinct committeemen of the appropriate political party who are *from the precincts that comprise the legislative district in which the vacancy occurred* shall appoint, within twenty-one days after notification of the vacancy by the secretary of state and by a majority vote, a qualified elector to fill the vacancy who meets the requirements for service in the legislature and who belongs to the same political party and resides at the time of appointment *in the same district* as the person elected to or appointed to the office immediately before the vacancy.

(Emphases supplied). The House Federal Mandates & States' Rights Committee voted to pass the bill without amendment. Public testimony praised the bill for putting the responsibility in the hands of the precinct committeemen, who were more familiar with the needs of the community. There were no opposing comments. The House passed it as introduced and transmitted it to the Senate.

The Senate Committee on the Judiciary discussed at length the fact that some legislative districts are comprised of portions of more than one county. This led to a conference committee that amended the bill. The version of HB 2586 ultimately enacted by the Legislature and signed by the Governor provided the following:

A. If a vacancy occurs in the legislature and the vacant seat was represented by a political party that is organized pursuant to title 16, chapter 5, article 2 and that has at least thirty elected committeemen who are from precincts that are in the legislative district *and that are in the county in which the vacancy occurred*, the secretary of state shall notify the state party chairman of the appropriate political party. Within three business days after notification of the vacancy by the secretary of state, the state party chairman or the chairman's designee shall give written notice of the meeting to fill the vacancy to all elected precinct committeemen of the appropriate political party from precincts that are in the legislative district *and that are in the county in which the vacancy occurred*. Those elected precinct committeemen shall nominate, within twenty-one days after notification of the vacancy by the secretary of state if the legislature is not in regular session or within five days if the legislature is in regular session and by a majority vote, three qualified electors to fill the vacancy who meet the requirements for service in the legislature and who belong to the same political party and reside at the time of nomination *in the same district and county as the person elected to or appointed to the office immediately before the vacancy*.

(Emphases supplied). In light of the conference committee's amendments, the county of residence requirement cannot be disregarded as an overlooked, anomalous vestige of the old apportionment regime. The 44th Legislature affirmatively added the reference to county of residence for the vacating legislator well after the change to the new population-driven apportionment regime. The legislators deliberated and decided to include residency in the vacating legislator's county as a qualification for the nominees to fill the vacancy.

The 2002 amendments, embodied in House Bill 2124, confirm the continuing vitality of the county of residence requirement. The introduced version removed the county-of-residence

requirement. Representative Gary Pierce, one of the bill's sponsors, explained that it was more desirable to allow all precinct committeemen in a district select the three nominees. Under the bill, the board of supervisors from the county in which the vacating legislator resides would still decide which of the three nominees to appoint for the vacancy. Senator Jack Brown proposed a floor amendment to undo the deletion of the county-of-residence references. Adopting the floor amendment, the Legislature passed a final version that kept the county-of-residence language.

The Legislature again amended § 41-1202 in 2012 through House Bill 2033, and again kept the county-of-residency requirement.

The Legislature affirmatively added the county-of-residency requirement as a qualification for potential nominees to fill a vacancy well after the change to population-based redistricting. The statutory language is unambiguous and requires nominees to fill a vacancy to reside in the same county as the vacating legislator.

Eligible Nominees Must Meet the Residency Requirement as a Qualification for Office.

The answer to the second question presented—whether a person can indicate a room over a commercial property as his or her residence for purposes of establishing residency for appointment to fill a vacancy—depends upon whether the person actually resides in the room, rather than whether the room is above commercial property. We cannot answer the second question without addressing facts and circumstances that are not set out in the question.

### Conclusion

Under A.R.S. § 41-1202, nominees to fill a legislative vacancy in districts encompassing portions of more than one county must be residents of the same county in which the vacating legislator resides. How and whether a prospective nominee may establish residency for purposes of this statute encompasses factual questions beyond the scope of this opinion.

Thomas C. Horne  
Attorney General